



Memorandum

To : Mr. Verne Walton

Date : April 6, 1988

From : *Barbara G. Elbrecht*
Barbara G. Elbrecht

Subject: Change in Ownership - Partition

This is in response to your memorandum of February 23, 1988, to Mr. Richard Ochsner in which you ask that we review for change in ownership purposes a series of documents transferring certain real property in Marin County. The documents provided by the Marin County Assessor are as follows:

1. A grant deed dated August 22, 1985, in which J. and E. grant to George a married man, as to an undivided 93 percent interest, and to Herb and Rosemarie husband and wife, as community property, as to an undivided 7 percent interest, certain real property described as Lots 59 through 115 inclusive, H. Park, Unit 2.

2. A grant deed dated August 22, 1985, in which George granted to Marco certain real property described on an attachment not provided to us. From the other facts provided, it appears that George granted to Marco his undivided 93 percent interest in H. Park, Unit 2.

3. An unrecorded undated agreement entered into and effective as of August 23, 1985, which recites, among other things:

a. The agreement is between Marco ("Marco"), Herbert and Rosemarie ("Herb"), George ("George"), Anthony ("Tony") and Gene ("Gene").

b. H. Park II is a 57-unit apartment complex.

c. Marco is buying 53 units, a 93 percent fractional interest in H. Park II.

d. Herb is buying 4 units, a 7 percent fractional interest in H. Park II.

e. Herb's interest is not encumbered by nor subject to the Deed of Trust, despite the language of the Deed of Trust.

2/0 Co-owners

f. Herb's interest in H. Park II is that of a tenant in common, and not that of a partner or joint venturer with the other parties. Herb has no interest in the other parties' ownership interests in H. Park II.

g. As a matter of convenience, the parties may agree to operate their respective interests in H. Park II in common with each party paying his proportional share of the expense.

h. When approval is received from the California Department of Real Estate to convert the apartment units into condominiums, the tenancy in common shall terminate and each party shall receive separate deeds to the units owned.

4. A quitclaim deed dated December 26, 1985, in which Marco quitclaims his interest in lots 59 through 115, H. Park Unit 2 to Marco Properties, a general partnership.

5. A quitclaim deed dated November 25, 1986, in which Marco Properties quitclaims to Herb its interest in lots 72, 73, 74 and 75 of H. Park, Unit 2.

6. A quitclaim deed dated November 25, 1986, in which Herb quitclaims to Marco Properties their interest in lots 59 through 115, H. Park, Unit 2.

7. A letter from Herb dated July 23, 1987, setting forth his reasons why the execution of the quitclaim deeds did not result in a change in ownership.

Herb's
Although the deeds creating t interest in H. Park, Unit 2 states that they acquired an undivided seven percent interest in lots 59 through 115 inclusive, the taxpayers claim this is not true. They assert that they specifically purchased parcels 160-601-14, 15, 16 and 17 (Lots 72, 73, 74 and 75). They argue that since the Agreement Concerning Tenancy in Common states that they are buying "4 units, a 7% fractional interest in H. Park II," they were the sole owners of the subject lots. Therefore, they argue, the quitclaim deeds were executed to "clear any cloud on our title and did not represent a change in ownership or exchange in value."

Marco
The County viewed all 57 parcels as owned by Properties as to an undivided 93 percent interest and by Herb as to an undivided seven percent interest. Based on the quitclaim deeds, they reappraised seven percent of the

interest in the 53 units owned by ^{Marco} Properties and 93 percent of the interest in the four units owned by ^{Herb}.

ANALYSIS

Property tax Ruled 462(k)(2) deals with deed presumptions and states:

Deed presumption. When more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in property. When the presumption is not rebutted, any transfer between the parties will be a change in ownership. In overcoming this presumption, consideration may be given to, but not limited to, the following factors:

(A) The existence of a written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests.

(B) The monetary contribution of each party. The best evidence of the existence of such factors shall be a judicial finding or order. Proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written agreements, cancelled checks, insurance policies, and tax returns.

Section 662 of the Evidence Code states that:

The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.

Clear and convincing proof is defined as

"clear, explicit and unequivocal", "so clear as to leave no doubt," and "sufficiently strong to command the unhesitating assent of every reasonable mind." (1 Witkin, Calif. Evid. (3d ed. 1986) § 160, p. 137)

Under these legal principles, the language used on the deed is presumed to reflect the ownership interests taken by that deed. This presumption can be overcome only by proof that is clear and convincing; that is, evidence that is explicit, unequivocal and leaves no doubt.

The sole evidence presented that contraverts the language of the deed is the undated, unrecorded agreement between the owners described above. No independent documentation, such as insurance policies, deeds of trust, or contracts of sale have been presented to show separate ownership of these four lots. Therefore, it is our opinion that the clear and convincing evidence needed to rebut the presumption that ^{Herb} took an undivided seven percent interest has not been provided.

However, this conclusion does not automatically indicate that a change in ownership occurred as a result of the execution of the quitclaim deeds.

Section 62 of the Revenue and Taxation Code states that a change in ownership shall not include:

(a)(1) Any transfer between co-owners which results in a change in the method of holding title to the real property transferred without changing the proportional interests of the co-owners in that real property, such as a partition of a tenancy in common.

Letter to Assessors No. 80/84, dated May 16, 1980, states that "[a] partition is a division of property giving separate title to those who previously held undivided interests." That letter further states the application of the principles contained in Revenue and Taxation Code section 62(a)(1) concerning partition is relatively simple when only a single parcel is being split. However, when a partition involves more than one property or parcel its application becomes more complex.

Although there are no statutory limitations placed upon the location or extent of the property involved in the transfer, it is our position that Section [62(a)(1)] should be applied separately to each appraisal unit. For example, the splitting of a farm containing ten parcels would not be a change in ownership if proportional interests remained the same. However, the splitting of jointly held interests in two separate and distinct properties would require the comparison of the proportional interests held before and after the transfer in each separate property.

Historically, assessors value property on the basis of the "appraisal unit." That unit is defined in Assessors' Handbook Section 501 as the "unit most likely to be sold as indicated by an analysis of market data." We feel that using the "appraisal unit" basis in regard to Section [62(a)(1)] transfer is not only consistent with appraisal

practice but also the most practical approach from an administrative standpoint.

The county has stated that "the real question is whether the 57 lots plus the common area was one appraisal unit or separate appraisal units," and is asking us for our answer to that question.

The determination of what constitutes an appraisal unit is a decision normally made by the appraiser, based on the appraiser's knowledge of what is commonly bought and sold in the market place. However, in this instance, there is legal authority which may help answer the question presented.

In County of Los Angeles v. Hartford Acc. & Indem. Co. (1970) 3 Cal.App.3d 809 [83 Cal.Rptr. 740], the court explained that a condominium project, like a normal subdivision, is assessed as a single parcel to the record owner for the year in which the subdivision tract map is filed. Unlike a normal subdivision, however, separate assessment of individual units in the ensuing years is not automatic, but occurs only after the conveyance of at least one condominium unit. If no units are ever sold, the entire condominium project will continue to be assessed as a single parcel. Thus, this case permits a condominium project to be treated as a single appraisal unit before the individual condo units are sold.

Herb's Park II was an apartment complex, a single appraisal unit. When the requisite approval for conversion into condominiums was received by the owners, the parties executed the quitclaim deeds to grant Herb separate title to the property in which they had held an undivided interest. If this transfer occurred before the sale of a condo unit, the appraiser may view the complex as a single appraisal unit in accordance with County of Los Angeles v. Hartford Acc. & Indem. Co. If the appraiser makes this determination, the transfer could be considered a partition of an undivided interest following the guidelines of the LTA NO. 80/84. If, however, individual condo units had been sold before the transfer, the condo units themselves would apparently become the single appraisal units. In that case, the transfers could not be considered a partition.

I trust that the above information is helpful to you. If I can be of any further assistance, please do not hesitate to contact me.

BGE/rz

cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson

1495H



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May 2, 2006

***Re: Change in Ownership Treatment of Condominium Conversion and
Tenancy in Common Partition***

Dear Mr. :

This letter is in response to your December 14, 2005 correspondence addressed to former Acting Assistant Chief Counsel Selvi Stanislaus. In that letter, you made an inquiry regarding a condominium conversion and the subsequent partition of a tenancy in common. You questioned whether either event would result in a change in ownership of the real property under the Revenue and Taxation Code.¹

For the reasons hereinafter set forth, it is our opinion that the condominium conversion, alone, is not a change in ownership. Furthermore, the subsequent partition of the tenancy in common qualifies for the partition exclusion available under subdivision (a)(1) of section 62 and subdivision (b)(1)(A) of Property Tax Rule² 462.020 provided that each of the former tenants in common maintains his proportional ownership interests in the property and the partition is completed before the first condominium unit is sold to a third party.

Background and Facts

As described in your letter, the following facts are relevant to this analysis:

1. Three brothers, hereafter "A", "B", and "C", purchased a nine-unit apartment building in Los Angeles in 1989.
2. They acquired the property as tenants in common; A owning a 40 percent undivided interest, B owning a 35 percent undivided interest, and C owning a 25 percent undivided interest.

¹ All statutory references are to the Revenue and Taxation Code, unless otherwise noted.

² All Property Tax Rule or Rule references are to Title 18 of the California Code of Regulations.

3. For approximately 15 years, the three brothers operated the property as rental apartments.
4. During 2005, the three brothers recorded a subdivision map that converted the property into condominiums.
5. On November 15, 2005, the three brothers partitioned their tenancy-in-common interests into separate divided interests.
6. In exchange for his 40 percent undivided interest, A received 4 of the 9 condominium units and exclusive use common areas. Those units have an appraised value approximately equal to 40 percent of the property's total value.
7. In exchange for his 35 percent undivided interest, B received 3 of the 9 condominium units. Those units have a total appraised value approximately equal to 35 percent of the property's total value.
8. In exchange for his 25 percent undivided interest, C received 2 of the 9 condominium units. Those units have a total appraised value approximately equal to 25 percent of the property's total value.
9. To effect the partition, the brothers exchanged grant deeds of their undivided interests in the entire property for grants deeds for separate divided interests in the individual condominium units. Appraised values of those units were approximately equal to each of the brothers' proportional undivided interest before the partition.
10. All of the steps described above occurred prior to the sale of any of the condominiums to a third party.

Law and Analysis

1. Did the condominium conversion result in a change in ownership?

No. A condominium conversion does not result in a change in ownership.

As you are aware, Revenue and Taxation Code section 60 defines a change in ownership as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." Whether or not a particular transaction involving real property falls within this definition depends upon the facts in each case. To be a "change in ownership" under section 60, the particular transaction must embody the following three characteristics contained in the definition:

- (1) It transfers a present interest in real property;
- (2) It transfers the beneficial use of the property; and
- (3) The property rights transferred are substantially equivalent in value to the fee interest.

In this case, the three brothers held unequal tenancy-in-common ownership interests in an apartment building. Each brother had the right to income from the property in proportion to his ownership interests. Immediately after recording the subdivision maps, we assume that the three brothers held unequal tenancy-in-common in common interests in the entire development, proportional to their ownership interests in the apartment building prior to the conversion. Since the conversion of an apartment building into condominiums does not, in itself, involve a transfer of property interests, no change in ownership occurs. (See Annotation 220.0050.)

2. Does the partition of the property among the now former tenants in common qualify for the change in ownership exclusion available under Revenue and Taxation Code section 62, subdivision (a)(1)?

Yes, as long as the partition occurs prior to the sale of any condominium unit.

Subdivision (f) of section 61 provides the general rule that: "The creation, transfer, or termination of any tenancy-in-common interest, except as provided in subdivision (a) of Section 62, and in Section 63" is a change in ownership. Unless a transaction qualifies for an exclusion, this result is automatic whether the property is transferred by purchase, gift, devise, or any other means of conveying present beneficial ownership. (Property Tax Rule 462.001.) However, under subdivision (a)(1) of section 62, a change in ownership does not include:

Any transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common.

Thus, subdivision (a)(1) of section 62 excludes partitions from change in ownership provided that the partition is merely a change in the method of holding title and that the former tenants in common maintain their proportional interests in the real property before and after the partition.

Letter to Assessors No. 80/84, issued May 16, 1980, contains the Board's advice regarding the application of the partition exclusion:

A partition is a division of property giving separate title to those who previously held undivided interests. The provisions of Section 62(a) are applicable only to the transfer of interests held in joint tenancy and tenancy in common. Partitions between co-owners involving other forms of co-ownership (community property and partnerships) are specifically covered in other code sections.

The application of Section 62(a) when a single parcel is being split is relatively simple. When a partition involves more than one property or parcel its application becomes more complex. Although there are no statutory limitations placed upon the location or extent of the property involved in the transfer, it is our position that Section 62(a) should be applied separately to each appraisal unit. For example, the splitting of a farm containing ten parcels would not be a change in ownership if the proportional interests remained the same. However, the splitting of jointly held interests in two separate and distinct properties would require the comparison of the proportional interests held before and after the transfer in each separate property.

As applied to condominiums, however, an appraisal unit is defined differently from other subdivisions of real property:

Unlike a normal subdivision, however, the mere recording of the final tract map does not automatically convert the single parcel of land into as many separate condominium units as appear on the tract map. [Footnote omitted] The reason for this is found in Civil Code section 783, which defines a condominium as an estate in real property consisting of two interests: (1) an undivided interest in common in a portion of a parcel of real property, and (2) a separate interest in space in a building on such real property. There can be no undivided interest in common (and thus by statutory definition there can be no condominium) until at least one condominium unit has been conveyed by the subdivider. . . .

This difference between a normal subdivision and a condominium project is emphasized by the manner in which the latter is assessed. A condominium project, like a normal subdivision, is assessed as a single parcel to the record owner for the year in which the tract map is filed. Unlike a normal subdivision, however, separate assessment of individual units in the ensuing years is not automatic. As required by Revenue and Taxation Code section 2188.3, the property must first be divided into condominiums as defined by Civil Code section 783. Only after the conveyance of at least one unit will each condominium owned in fee be separately assessed. If no units are ever sold, the entire condominium project will continue to be assessed as a single parcel to the record owner (*County of Los Angeles v. Hartford Acc. & Indem. Co.* (1970) 3 Cal.App.3d 809, at 814-815.)

The Court of Appeal's holding above makes it clear that, until the first condominium unit is sold, a condominium project must be assessed as a single parcel to the record owner or owners. Here, the facts show that none of the condominium units were sold prior to the partition of the tenancy in common. Consequently, the entire project is properly treated as a single appraisal unit for assessment purposes. (See Annotation 220.0055.)

Under the holding in *Hartford*, the property in this case is considered to be a single appraisal unit (even though the property has otherwise been subdivided into condominiums) until the first condominium is sold to a third party ("first sale"). A, B, and C executed the documents necessary to effect the partition of their tenancy in common interests in the property prior to the

May 2, 2006

"first sale". After the partition, each of the former tenants in common acquired divided title to certain individual condominium units that, in value, represent each brother's previous tenancy-in-common interest. Provided each brother maintains his proportional interest in the property, before and after the partition, that partition qualifies for the exclusion available under subdivision (a)(1) of section 62.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

A handwritten signature in black ink that reads "Michael Lebeau". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Lebeau
Senior Tax Counsel

ML:jlh

Prop/prec/Coowners/06/05-831-ml.doc

Prop/prec/Prop13 General/06/05-831-ml.doc

cc: Honorable
County Assessor

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70